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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-SECOND SESSION

H. F. No. 4085

03/07/2022 Authored by Hanson, J.; Bahner and Moller
The bill was read for the first time and referred to the Committee on Human Services Finance and Policy

1.1 A bill for an act
1.2 relating to human services; modifying personal care assistance program; amending
1.3 Minnesota Statutes 2020, section 256B.0659, subdivisions 1, 12, 19, 24.

1.4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.5 Section 1. Minnesota Statutes 2020, section 256B.0659, subdivision 1, is amended to read:

1.6 Subdivision 1. Definitions. (a) For the purposes of this section, the terms defined in
1.7 paragraphs (b) to (r) have the meanings given unless otherwise provided in text.

1.8 (b) "Activities of daily living" means grooming, dressing, bathing, transferring, mobility,
1.9 positioning, eating, and toileting.

1.10 (c) "Behavior," effective January 1, 2010, means a category to determine the home care
1.11 rating and is based on the criteria found in this section. "Level I behavior" means physical
1.12 aggression towards toward self, others, or destruction of property that requires the immediate
1.13 response of another person.

1.14 (d) "Complex health-related needs," effective January 1, 2010, means a category to
1.15 determine the home care rating and is based on the criteria found in this section.

1.16 (e) "Critical activities of daily living," effective January 1, 2010, means transferring,
1.17 mobility, eating, and toileting.

1.18 (f) "Dependency in activities of daily living" means a person requires assistance to begin
1.19 and complete one or more of the activities of daily living.

1.20 (g) "Extended personal care assistance service" means personal care assistance services
1.21 included in a service plan under one of the home and community-based services waivers

2.1 authorized under chapter 256S and sections 256B.092, subdivision 5, and 256B.49, which  
2.2 exceed the amount, duration, and frequency of the state plan personal care assistance services  
2.3 for participants who:

2.4 (1) need assistance provided periodically during a week, but less than daily will not be  
2.5 able to remain in their homes without the assistance, and other replacement services are  
2.6 more expensive or are not available when personal care assistance services are to be reduced;  
2.7 or

2.8 (2) need additional personal care assistance services beyond the amount authorized by  
2.9 the state plan personal care assistance assessment in order to ensure that their safety, health,  
2.10 and welfare are provided for in their homes.

2.11 (h) "Health-related procedures and tasks" means procedures and tasks that can be  
2.12 delegated or assigned by a licensed health care professional under state law to be performed  
2.13 by a personal care assistant.

2.14 (i) "Instrumental activities of daily living" means activities to include meal planning and  
2.15 preparation; basic assistance with paying bills; shopping for food, clothing, and other  
2.16 essential items; performing household tasks integral to the personal care assistance services;  
2.17 communication by telephone and other media; and traveling, including to medical  
2.18 appointments and to participate in the community. For purposes of this paragraph, traveling  
2.19 includes driving and accompanying the recipient in the recipient's chosen mode of  
2.20 transportation and according to the recipient's personal care assistance care plan.

2.21 (j) "Managing employee" has the same definition as Code of Federal Regulations, title  
2.22 42, section 455.

2.23 (k) "Qualified professional" means a professional providing supervision of personal care  
2.24 assistance services and staff as defined in section 256B.0625, subdivision 19c.

2.25 (l) "Personal care assistance provider agency" means a medical assistance enrolled  
2.26 provider that provides or assists with providing personal care assistance services and includes  
2.27 a personal care assistance provider organization, personal care assistance choice agency,  
2.28 class A licensed nursing agency, and Medicare-certified home health agency.

2.29 (m) "Personal care assistant" or "PCA" means an individual employed by a personal  
2.30 care assistance agency who provides personal care assistance services.

2.31 (n) "Personal care assistance care plan" means a written description of personal care  
2.32 assistance services developed by the personal care assistance provider according to the  
2.33 service plan.

3.1 (o) "Responsible party" means an individual who is capable of providing the support  
3.2 necessary to assist the recipient to live in the community.

3.3 (p) "Self-administered medication" means medication taken orally, by injection, nebulizer,  
3.4 or insertion, or applied topically without the need for assistance.

3.5 (q) "Service plan" means a written summary of the assessment and description of the  
3.6 services needed by the recipient.

3.7 (r) "Wages and benefits" means wages and salaries, the employer's share of FICA taxes,  
3.8 Medicare taxes, state and federal unemployment taxes, workers' compensation, mileage  
3.9 reimbursement, health and dental insurance, life insurance, disability insurance, long-term  
3.10 care insurance, uniform allowance, and contributions to employee retirement accounts.

3.11 **EFFECTIVE DATE.** This section is effective 90 days following federal approval. The  
3.12 commissioner of human services shall inform the revisor of statutes when federal approval  
3.13 is obtained.

3.14 Sec. 2. Minnesota Statutes 2020, section 256B.0659, subdivision 12, is amended to read:

3.15 Subd. 12. **Documentation of personal care assistance services provided.** (a) Personal  
3.16 care assistance services for a recipient must be documented daily by each personal care  
3.17 assistant, on a time sheet form approved by the commissioner. All documentation may be  
3.18 web-based, electronic, or paper documentation. The completed form must be submitted on  
3.19 a monthly basis to the provider and kept in the recipient's health record.

3.20 (b) The activity documentation must correspond to the personal care assistance care plan  
3.21 and be reviewed by the qualified professional.

3.22 (c) The personal care assistant time sheet must be on a form approved by the  
3.23 commissioner documenting time the personal care assistant provides services in the home.  
3.24 The following criteria must be included in the time sheet:

3.25 (1) full name of personal care assistant and individual provider number;

3.26 (2) provider name and telephone numbers;

3.27 (3) full name of recipient and either the recipient's medical assistance identification  
3.28 number or date of birth;

3.29 (4) consecutive dates, including month, day, and year, and arrival and departure times  
3.30 with a.m. or p.m. notations;

3.31 (5) signatures of recipient or the responsible party;

- 4.1 (6) personal signature of the personal care assistant;
- 4.2 (7) any shared care provided, if applicable;
- 4.3 (8) a statement that it is a federal crime to provide false information on personal care
- 4.4 service billings for medical assistance payments; ~~and~~
- 4.5 (9) dates and location of recipient stays in a hospital, care facility, or incarceration; and
- 4.6 (10) any time spent traveling, as described in subdivision 1, paragraph (i), including
- 4.7 start and stop times with a.m. and p.m. designations, the origination site, and the destination
- 4.8 site.

4.9 **EFFECTIVE DATE.** This section is effective 90 days following federal approval. The

4.10 commissioner of human services shall inform the revisor of statutes when federal approval

4.11 is obtained.

4.12 Sec. 3. Minnesota Statutes 2020, section 256B.0659, subdivision 19, is amended to read:

4.13 Subd. 19. **Personal care assistance choice option; qualifications; duties.** (a) Under

4.14 personal care assistance choice, the recipient or responsible party shall:

4.15 (1) recruit, hire, schedule, and terminate personal care assistants according to the terms

4.16 of the written agreement required under subdivision 20, paragraph (a);

4.17 (2) develop a personal care assistance care plan based on the assessed needs and

4.18 addressing the health and safety of the recipient with the assistance of a qualified professional

4.19 as needed;

4.20 (3) orient and train the personal care assistant with assistance as needed from the qualified

4.21 professional;

4.22 (4) ~~effective January 1, 2010,~~ supervise and evaluate the personal care assistant with the

4.23 qualified professional, who is required to visit the recipient at least every 180 days;

4.24 (5) monitor and verify in writing and report to the personal care assistance choice agency

4.25 the number of hours worked by the personal care assistant and the qualified professional;

4.26 (6) engage in an annual face-to-face reassessment to determine continuing eligibility

4.27 and service authorization; ~~and~~

4.28 (7) use the same personal care assistance choice provider agency if shared personal

4.29 assistance care is being used; and

5.1 (8) ensure that a personal care assistant driving the recipient under subdivision 1,  
5.2 paragraph (i), has a valid driver's license and the vehicle used is registered and insured  
5.3 according to Minnesota law.

5.4 (b) The personal care assistance choice provider agency shall:

5.5 (1) meet all personal care assistance provider agency standards;

5.6 (2) enter into a written agreement with the recipient, responsible party, and personal  
5.7 care assistants;

5.8 (3) not be related as a parent, child, sibling, or spouse to the recipient or the personal  
5.9 care assistant; and

5.10 (4) ensure arm's-length transactions without undue influence or coercion with the recipient  
5.11 and personal care assistant.

5.12 (c) The duties of the personal care assistance choice provider agency are to:

5.13 (1) be the employer of the personal care assistant and the qualified professional for  
5.14 employment law and related regulations including, but not limited to, purchasing and  
5.15 maintaining workers' compensation, unemployment insurance, surety and fidelity bonds,  
5.16 and liability insurance, and submit any or all necessary documentation including, but not  
5.17 limited to, workers' compensation, unemployment insurance, and labor market data required  
5.18 under section 256B.4912, subdivision 1a;

5.19 (2) bill the medical assistance program for personal care assistance services and qualified  
5.20 professional services;

5.21 (3) request and complete background studies that comply with the requirements for  
5.22 personal care assistants and qualified professionals;

5.23 (4) pay the personal care assistant and qualified professional based on actual hours of  
5.24 services provided;

5.25 (5) withhold and pay all applicable federal and state taxes;

5.26 (6) verify and keep records of hours worked by the personal care assistant and qualified  
5.27 professional;

5.28 (7) make the arrangements and pay taxes and other benefits, if any, and comply with  
5.29 any legal requirements for a Minnesota employer;

5.30 (8) enroll in the medical assistance program as a personal care assistance choice agency;  
5.31 and

6.1 (9) enter into a written agreement as specified in subdivision 20 before services are  
6.2 provided.

6.3 **EFFECTIVE DATE.** This section is effective 90 days following federal approval. The  
6.4 commissioner of human services shall inform the revisor of statutes when federal approval  
6.5 is obtained.

6.6 Sec. 4. Minnesota Statutes 2020, section 256B.0659, subdivision 24, is amended to read:

6.7 Subd. 24. **Personal care assistance provider agency; general duties.** A personal care  
6.8 assistance provider agency shall:

6.9 (1) enroll as a Medicaid provider meeting all provider standards, including completion  
6.10 of the required provider training;

6.11 (2) comply with general medical assistance coverage requirements;

6.12 (3) demonstrate compliance with law and policies of the personal care assistance program  
6.13 to be determined by the commissioner;

6.14 (4) comply with background study requirements;

6.15 (5) verify and keep records of hours worked by the personal care assistant and qualified  
6.16 professional;

6.17 (6) not engage in any agency-initiated direct contact or marketing in person, by phone,  
6.18 or other electronic means to potential recipients, guardians, or family members;

6.19 (7) pay the personal care assistant and qualified professional based on actual hours of  
6.20 services provided;

6.21 (8) withhold and pay all applicable federal and state taxes;

6.22 (9) document that the agency uses a minimum of 72.5 percent of the revenue generated  
6.23 by the medical assistance rate for personal care assistance services for employee personal  
6.24 care assistant wages and benefits. The revenue generated by the qualified professional and  
6.25 the reasonable costs associated with the qualified professional shall not be used in making  
6.26 this calculation;

6.27 (10) make the arrangements and pay unemployment insurance, taxes, workers'  
6.28 compensation, liability insurance, and other benefits, if any;

6.29 (11) enter into a written agreement under subdivision 20 before services are provided;

6.30 (12) report suspected neglect and abuse to the common entry point according to section  
6.31 256B.0651;

7.1 (13) provide the recipient with a copy of the home care bill of rights at start of service;

7.2 (14) request reassessments at least 60 days prior to the end of the current authorization  
7.3 for personal care assistance services, on forms provided by the commissioner;

7.4 (15) comply with the labor market reporting requirements described in section 256B.4912,  
7.5 subdivision 1a; ~~and~~

7.6 (16) document that the agency uses the additional revenue due to the enhanced rate under  
7.7 subdivision 17a for the wages and benefits of the PCAs whose services meet the requirements  
7.8 under subdivision 11, paragraph (d); and

7.9 (17) ensure that a personal care assistant driving a recipient under subdivision 1,  
7.10 paragraph (i), has a valid driver's license and the vehicle used is registered and insured  
7.11 according to Minnesota law.

7.12 **EFFECTIVE DATE.** This section is effective 90 days following federal approval. The  
7.13 commissioner of human services shall inform the revisor of statutes when federal approval  
7.14 is obtained.